No. 89-236

In The

Supreme Court of the United States

October Term, 1989

COASTAL PETROLEUM COMPANY,

Petitioner,

v.

INTERNATIONAL MINERALS & CHEMICAL CORPORATION,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION OF RESPONDENT INTERNATIONAL MINERALS & CHEMICAL CORPORATION

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QUESTIONS PRESENTED

1. Whether it was error for the Court of Appeals to refuse to certify a state law issue to the Florida Supreme Court when both the District Court and the Court of Appeals determined that Florida law was clear on the point at issue.

2. Whether Coastal was entitled to relief on appeal under Rules 2, 8, and 54(c) when no such request was ever presented to the District Court and Coastal was not the prevailing party below.

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OPINIONS BELOW

The opinion of the District Court is reported at 709 F.Supp. 1092 (N.D. Fla. 1988). The unreported summary decision of the Court of Appeals approving the District Court's reasoning and decision is quoted on the first page of the petition.

Respondent accepts petitioner's statement of jurisdiction but will restate the questions involved. Because petitioner's statement of the case does not fairly describe the portions of the record below supporting the judgments entered, respondent will provide its own statement.

STATEMENT OF THE CASE

Coastal Petroleum Company (Coastal) filed its complaint in November, 1977, seeking compensatory damages in excess of $800,000,000 and punitive damages against respondent (IMC) for the alleged conversion of phosphate and uranium. The State of Florida through its Board of Trustees of the Internal Improvement Trust Fund (Trustees) was joined as alleged owner of the mined lands, which were alleged to be under lease to Coastal. Throughout this litigation, the Trustees disclaimed any interest, asserting that they made no sovereignty claim to the lands in suit (R 9-186).

The foundation of Coastal's complaint was that IMC had converted minerals in which Coastal held an interest.

In its answer filed in May, 1978, IMC expressly denied that allegation and placed the nature of Coastal's claimed interest at issue.[1]

Addressing that issue framed by the pleadings, IMC ultimately moved for summary judgment on the ground that Coastal lacked the possessory interest necessary to maintain an action for conversion (R 21-549). The District Court determined that the issue was controlled by a decision of Florida's highest court and that Coastal's lease conveyed, at most, "the inchoate right to explore for and produce certain minerals from those lands encompassed by the lease." 709 F.Supp. at 1098. Having further concluded that, under Florida law, such a right would not support an action for conversion, the District Court granted IMC's motion and entered judgment in its favor.

Coastal filed no post-judgment motions and requested no further relief in the District Court, either under Rule 54(c) or any other rule. Instead, Coastal perfected an appeal to the Court of Appeals for the Eleventh Circuit. In its submission to that court, Coastal urged reversal of the judgment on multiple grounds and did not seek certification of any state law question to the Florida Supreme Court.

In a per curiam opinion, the Court of Appeals affirmed the judgment "for the reasons stated in the Final Order of the United States District Court." Thereafter, in

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[1] "IMC denies that it has converted any phosphate or uranium owned by or in which Coastal has any rights." (R 2-52A-7).

conjunction with a petition for rehearing and for rehearing en banc, Coastal for the first time asked the Court of Appeals to certify certain state law questions to the Florida Supreme Court. The Court of Appeals denied the petition and the motion.

REASONS WHY THE WRIT SHOULD BE DENIED

1. The Court of Appeals did not err in refusing to certify a state law issue to the Florida Supreme Court when both the District Court and the Court of Appeals determined that Florida law was clear on the point at issue.

Coastal's asserted basis for asking this Court to certify a question of law to the Florida Supreme Court arises from a faulty premise. In both decisions of this Court upon which Coastal relies, the Court of Appeals had determined that there was no controlling state precedent: *Clay v. Sun Insurance Office Limited*, 363 U.S. 207, 212 (1960)("as the Court of Appeals indicated, it could not, on the available materials, make a confident guess how the Florida Supreme Court would construe the statute"); *Lehman Brothers v. Schein*, 416 U.S. 386, 389 (1974) ("While the Court of Appeals held that Florida law was controlling, it found none that was decisive").[2]

[2] In *Schein*, this Court commented on the hazard of allowing New York judges "to predict uncertain Florida law" because: "When federal judges in New York attempt to predict

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That is decidedly not the case here. The District Judge found clear Florida precedent for his ruling and so stated:

> [T]his Court is compelled to follow Florida law, as embodied in *Miller v. Carr*. . . .
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> Based on the authority of *Miller v. Carr*, rendered by the highest court of this state, this Court concludes as a matter of law that, at most, Lease 224-B conveyed to Coastal the inchoate right to explore for and produce certain minerals from those lands encompassed by the lease. . . . [T]his Court GRANTS IMC's motion for summary judgment based on Coastal's lack of possessory interest under the lease.

709 F.Supp. at 1098.

The District Judge's carefully-reasoned order reflected that he had reached the precise conclusion already arrived at by two other judges in two earlier cases: *Coastal Petroleum Co. v. Secretary of the Army of the*

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uncertain Florida law, they act, as we have referred to ourselves on this Court in matters of state law, as 'outsiders' lacking the common exposure to local law which comes from sitting in the jurisdiction." 416 U.S. at 391.

To the contrary, the District Judge below sits in Florida and was a state trial judge before appointment to the federal bench. Two members of the Court of Appeals panel are resident in Florida and were Florida lawyers before appointment as judges. The Eleventh Circuit, like other federal appellate courts, has traditionally accorded great weight to the decision of a district judge applying the local law of his own state in which he has had long experience. E.g., *Steele v. Ford Motor Credit Co.*, 783 F.2d 1016, 1018 (11th Cir. 1986).

United States, Nos. 68-951-Civ-CA and 69-699-Civ-CA (S.D. Fla. 1971) (unreported; R 21-549-Att. E) (District Judge Clyde Atkins);[3] *American Cyanamid Co. v. Coastal Petroleum Co.*, No. GCG-82-2973 (Fla. Polk County Cir. Ct. 1987) (unreported; R 29-642-Att. C) (State Court Judge William Norris). All three courts concluded that Coastal's lease conferred *only* the right to explore for and produce such minerals as Coastal itself discovered, and did not give Coastal any interest in, or right to possession of, or entitlement to damages for, minerals extracted by others.

Manifestly, *this* case, unlike the cases cited in the petition, was resolved by the lower courts under authority of clear Florida precedent.

Coastal's petition concedes that the decision whether to certify a state law question is within the discretion of the Circuit Court. (Pet. 10.) But Coastal's concession does not reach nearly far enough. The scope of that discretion is best defined in the concurring opinion of then Justice Rehnquist in *Schein*, from which we quote:

> The question of whether certification on the facts of this case, particularly in view of the lateness of its suggestion by petitioners, would have advanced the goal of correctly disposing of this litigation on the state law issue is one which I would leave, and I understand that the Court would leave, to the sound judgment of the court making the initial choice.

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[3] "I am convinced that the law of Florida is clear and find no need to look to the law of any other state. The controlling decision is *Miller v. Carr*, 141 Fla. 318, 193 So. 45 (1940)." Excerpt from Judge Atkins' opinion. Coastal did not appeal the adverse ruling by Judge Atkins on the point at issue here.

416 U.S. at 395. Here that "sound judgment" has already been made. On the facts of this case, no reason has been demonstrated why this Court should disturb it.

In a companion case, *Mobil Oil Corp. v. Coastal Petroleum Co.*, 671 F.2d 419 (11th Cir. 1982), *cert. denied*, 459 U.S. 970 (1982), the Eleventh Circuit has already determined that there is absolutely no federal interest in the subject matter of this controversy between Coastal and various phosphate producers.[4] Indeed, the very question that Coastal postulates for certification to the Florida Supreme Court[5] underscores the point that this is purely a question of state law. Given this reality, Coastal demonstrates nothing in its petition that should reasonably motivate an exercise of this Court's jurisdiction.[6]

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[4] See also *Coastal Petroleum Co. v. U.S.S. Agri-Chemicals*, 695 F.2d 1314, 1319 (11th Cir. 1983): "The issues now remaining in the Coastal suit involve questions dependent entirely upon state law."

[5] "Whether *under Florida law* an exclusive lessee of a state lease granted under Chapter 20680, Fla. Laws (1941), has a sufficient interest to bring an action against a third party trespasser who mines and takes minerals from the leased area?" (Pet. 7, emphasis added.)

[6] Respondent has not overlooked the hyperbole sprinkled throughout the petition portraying Coastal's own view of the importance of the merits of this case. E.g., Pet. 3, 4, 8, 12, 13, 19, 20. To a large extent, these bold claims are contradicted by record findings made by the District Judge:

> "The [state] Court further found that any rights Coastal may have had were extinguished by the 1976

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2. Coastal was not entitled to relief on appeal under Rules 2, 8, and 54(c) when no such request was ever presented to the District Court and Coastal was not the prevailing party below.

As its second point in support of the petition for certiorari, Coastal asserts (Pet. 14-15) that the Eleventh Circuit's decision is "in conflict with the decisions of this Court and other Circuit Courts," and constitutes "a radical departure . . . from the usual and reasonable practice of Federal courts" with respect to the application of Federal Rules of Civil Procedure 2, 8(f), and 54(c). Coastal contends that the Eleventh Circuit erred in affirming the summary judgment against Coastal on its conversion claim "where the pleaded facts and record supported relief upon legal theories unaffected and unaddressed by the court" – specifically, for statutory theft and for common law accounting. Analysis reveals, however, that Coastal has misconceived both the function of the cited rules and the effect of the District Court's determination regarding Coastal's substantive rights.

Initially, it merits emphasis that Coastal never asserted the statutory theft or common law accounting theories of recovery, and never raised the argument that it is entitled to relief under Rule 54(c), until this case was pending on appeal before the Eleventh Circuit. In its

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> Memorandum of Settlement entered into between Coastal and the Trustees. . . . Coastal has neither produced minerals nor paid any royalties to the Trustees." 709 F.Supp. at 1098.

In any event, exalted claims as to the magnitude of a particular case are totally inappropriate as a suggested reason for this Court to exercise its jurisdiction.

complaint, and throughout the ensuing eleven years of litigation that preceded the entry of summary judgment, Coastal asserted only a claim for the alleged conversion of phosphate.[7] Thus, the Eleventh Circuit could properly have rejected Coastal's attempt to interject new claims into the case for the first time on appeal, based on the fundamental principle that an appellate court will not consider a new theory not presented to the lower court. *Capps v. Humble Oil & Refining Co.*, 536 F.2d 80, 82 (5th Cir. 1976).[8]

Even if the alternative claims had been raised, the District Court was not required to consider other causes of action, because it is no abuse of discretion to preclude a party from belatedly tendering entirely new issues or theories, especially after a motion for summary judgment has been filed. *Lamar v. American Finance System of Fulton County, Inc.*, 577 F.2d 953, 954-55 (5th Cir. 1978). Faced with IMC's motion for summary judgment, Coastal bore the burden of overcoming IMC's supporting evidence and authorities; Coastal could not simply rest on its allegations and wait until trial to develop its claim. *First*

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[7] Although the complaint alleged that IMC had "not paid or accounted to Coastal" for the phosphate allegedly converted, that allegation was nothing more than a request for damages, which necessarily failed based on the determination that IMC was not liable to Coastal for conversion. Likewise, while Coastal referred to the theft statute in a memorandum as establishing a *new measure* of damages, it never suggested that the theft statute constituted an independent basis for recovery apart from the claim for conversion.

[8] See also, e.g., *Cargill, Inc. v. Monfort of Colorado, Inc.*, 479 U.S. 104, 114 n.9, 115 (1986); *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 147 n.2 (1970).

National Bank of Arizona v. Cities Service Co., 391 U.S. 253, 289-90 (1968); *Golden Oil Co. v. Exxon Co.*, 543 F.2d 548, 551 (5th Cir. 1976). Once IMC demonstrated that Coastal had no compensable interest in phosphate mined by others, Coastal's failure to make a showing sufficient to establish the existence of that essential element of its claim mandated the granting of summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

Coastal's contention that application of Rules 2 and 8 would have required a different result is unfounded. Rule 2 establishes one form of civil action, abolishing the technical distinctions between legal and equitable actions. Rule 8 directs the pleader to designate the relief sought, but elevates concerns for justice above technical form. In effect, these rules merely embody the policy of abandoning technical forms in favor of an emphasis on substance and fairness. They do not authorize a party to pursue a claim for eleven years and then, when faced with a summary judgment motion that shows the claim must fail due to a fundamental substantive deficiency, turn to the court and demand that it help in finding some other theory of recovery. None of the cases cited by Coastal even remotely supports such a reading of the rules, or applies the rules in a manner that conflicts with the result reached below.[9]

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[9] Of the nine cases cited by Coastal in connection with its discussion of Rules 2 and 8, seven involved orders dismissing complaints for failure to state a claim – a procedural context controlled by standards that differ significantly from those

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The crux of Coastal's claim for alternative relief is Rule 54(c), which provides:

> Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.

That Coastal's reliance on this provision below was misplaced is evident from the express language of the rule, because Rule 54(c) only directs the court to consider alternative forms of "relief," and only operates to benefit "the party in whose favor [judgment] is rendered."

Although Coastal attempts to characterize its newly formulated and belatedly proposed actions based on the theft statute and common law accounting as "other relief," they clearly constitute new substantive claims. In *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60 (1978), cited by Coastal, this Court recognized the distinction between the "relief" contemplated by Rule 54(c), and the theory of recovery, holding that Rule 54(c) requires consideration of alternate forms of relief only where the

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applicable to summary judgments – while the other two upheld final judgments (following bench trials) as against contentions that the case was decided on a theory not presented in the pleadings. None dealt with the question of whether, on appeal from an adverse summary judgment on the merits, the court is required by the rules to remand the case so that the plaintiff can present and pursue previously unasserted theories.

substantive claim of the party is determined to be meritorious:

> [A]lthough *the prayer for relief may be looked to for illumination when there is doubt as to the substantive theory* under which a plaintiff is proceeding, its omissions are not in and of themselves a barrier to redress of a meritorious claim. . . . But *while a meritorious claim will not be rejected for want of a prayer for appropriate relief, a claim lacking substantive merit obviously should be rejected.*

439 U.S. at 66 (emphasis added; citations omitted).

Coastal's request for relief under Rule 54(c) fails to recognize the limitations on the rule's applicability. Rule 54(c) simply requires a court to overlook inartful or inaccurate demands for relief, and enter the proper relief on the merits of the case. *Holt Civic Club v. City of Tuscaloosa, supra.* Manifestly, relief cannot be granted to the plaintiff unless the proof before the court establishes as a matter of law that the defendant is liable. See 10 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 2664 at 153-54 (1983)("[T]he essential antecedent issue is whether plaintiff has proven liability under some theory of recovery.").

Similar attempts to use Rule 54(c) in the manner urged by Coastal have failed. A plaintiff cannot proceed on one theory and then, after failing, seek Rule 54(c) relief, even if the two theories have similar elements. As the Fifth Circuit explained in rejecting a losing plaintiff's attempt to shift from one claim to another:

> The rule is inapplicable to the case before us. *In order for the rule to apply, there must have been a judgment in favor of the party requesting Rule 54(c) relief.* Here, the judgment was entered in favor

> of defendant, not plaintiffs. *The rule directs the court to order appropriate relief; it does not permit the court to impose liability where none has been established.* 6 Moore's Federal Practice, §§ 54.60-.62 (1981). Furthermore, a court cannot provide relief, even when it is demanded, if the plaintiff fails to assert a claim upon which the relief could be based. 10 Wright & Miller, [*Federal Practice and Procedure* (1971)] at § 2664.

Flannery v. Carroll, 676 F.2d 126, 132 (5th Cir. 1982)(emphasis added).

Aside from the fact that Coastal cannot invoke Rule 54(c) because it was not the prevailing party, the District Court's decision confirms that Coastal cannot establish a basis for imposing liability against IMC under any of its proposed theories. Whether predicated on conversion, or the theft statute, or common law accounting, Coastal's claim ultimately rests upon its asserted right to the phosphate mined by IMC from areas allegedly subject to Lease 224-B.[10] The District Court construed the lease, however, and concluded in accordance with Florida law – and with prior constructions of Coastal's lease by another federal district court and by a Florida state court – that Lease 224-B conferred on Coastal only the right to explore for certain substances and to remove any that it might discover; that Coastal obtained no right to any minerals under the lease until Coastal itself found, produced, and paid royalties to the Trustees on such minerals; and that Coastal's exploration and production rights, as well as

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[10] As previously noted, Coastal's own lessor, the Trustees, determined and admitted that the lands mined by IMC were not state-owned sovereignty lands subject to Coastal's lease.

any causes of action based on such rights, were extinguished when the Trustees and Coastal modified the lease in 1976.

The District Court's construction of Coastal's substantive rights under Lease 224-B not only precludes any possessory action for conversion, but poses an insurmountable obstacle to Coastal's proposed statutory theft[11] and accounting[12] claims as well. Thus, even if

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[11] Florida's theft statute affords to an "aggrieved person" a civil remedy against another who "knowingly obtains or uses, or endeavors to obtain or use, the property of another" with the intent to deprive the rightful owner of the benefit of the property or to appropriate the property to the use of itself or another. §§ 812.014(1) and 812.035(6), Fla. Stat. (1987). Because Coastal acquired no right to minerals until it found, produced, and paid royalties on those minerals, any phosphate produced by IMC could not have been the "property of" Coastal; thus, Coastal is not an aggrieved person entitled to invoke the civil remedy under Florida's theft statute.

[12] Coastal's claim for a common law accounting is based on the theory of constructive trust. Under Florida law, however, there can be no claim for constructive trust where the plaintiff does not have an interest in the disputed property, and a mere "lease option" does not constitute a sufficient interest. *Beville v. Freeman*, 483 So.2d 813, 815 (Fla. 2d DCA), *pet. for rev. denied*, 492 So.2d 1332 (Fla. 1986). Because Coastal's only interest in minerals under its lease was inchoate – in effect, an unexercised "lease option" to acquire the right to the phosphate by producing and paying royalties on it – and because Coastal never perfected an interest in the phosphate mined by IMC before Coastal's unexercised inchoate rights were extinguished in 1976, Coastal lacks a sufficient interest in the phosphate to maintain a claim for common law accounting based on a constructive trust.

Rules 2, 8, and 54(c) were applicable under the circumstances of this case, those rules did not require the Eleventh Circuit to consider for the first time on appeal new theories or claims by Coastal that are plainly meritless as a matter of Florida law. The Court of Appeals did not err in denying Coastal relief under Rules 2, 8, and 54(c).

CONCLUSION

The petition for a writ of certiorari should be denied.

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